

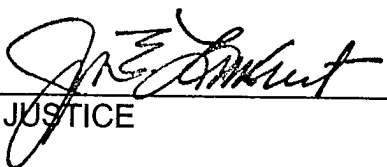
# Supreme Court of Kentucky

## ORDER

**IN RE:       NON-FELONY AND THEFT BY DECEPTION DIVERSION RULES FOR  
              THE 15th JUDICIAL DISTRICT OF CARROLL, GRANT & OWEN  
              COUNTIES**

Pursuant to KRS 533.262 and SCR 1.040(3)(a), and upon recommendation of the Judges of the District Court, and being otherwise sufficiently advised: The Non-Felony and Theft by Deception Diversion Rules for the 15th Judicial District, of Carroll, Grant and Owen counties, attached hereto, are hereby approved. This order shall be effective as of the date of this Order, and shall remain in effect until further orders of this court.

Entered: January 24, 2008.

  
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CHIEF JUSTICE

**ULCr Rule 60.00 15<sup>th</sup> Judicial District Courts (Carroll, Grant & Owen)**  
**Non-Felony Diversion:**

**I. ELIGIBILITY REQUIREMENTS**

- A. All persons charged in district court with the commission of a misdemeanor or violation, shall be eligible for participation in the Diversion Program, subject to the following conditions and exceptions:
1. Except as provided in subsection B and C, a prior conviction for a felony offense, misdemeanor offense, or violation shall preclude eligibility.
  2. Prior convictions for traffic violations under KRS Chapters 186 and 189 shall not preclude eligibility. A prior conviction for DUI shall preclude eligibility.
  3. Except as provided in subsection C, a person charged with a violent/assaultive crime shall not be eligible for participation in the Diversion Program.
  4. Except as provided in subsection C, a person charged with violation of the public trust, under KRS Chapter 522 shall not be eligible for participation in the Diversion Program.
  5. Except as provided in subsection C, a person charged with violating any traffic regulation under KRS Chapters 186, 189, and 189A, shall not be eligible for participation in the Diversion Program.
  6. Except as provided in subsection C, a person who has previously participated in the Diversion Program in Carroll, Grant, or Owen Counties or in any other jurisdiction inside or outside the Commonwealth of Kentucky shall not be eligible for participation in the Diversion Program.
- B. Where a person is charged with an offense of public intoxication under KRS 525.100, or alcohol intoxication under KRS 222.202, and that person has one or more prior convictions for alcohol related offenses other than DUI; and, where it appears from the person's record and history that his or her criminal activity is related to the disease of alcoholism or drug addiction, that person will be considered eligible for participation in the Diversion Program notwithstanding his or her previous convictions. A prior conviction for DUI shall preclude eligibility.

- C. Where reasons of an extraordinary nature are presented that warrant consideration of a person for participation in the Diversion Program, regardless of ineligibility by virtue of one or more of the exclusions set forth above, that person may be considered eligible for participation in the Diversion Program by the trial judge.
- D. A diversion report shall be prepared by the pretrial services office of the court and such report shall contain basic pretrial information; record of any past offenses and convictions; record of any prior participation in the diversion program or other similar program; employment status; length of residence in the area; and, any other information necessary to determine eligibility and appropriateness of approval to participate in the Diversion Program.

Prior to approval for participation in the Diversion Program the diversion report shall be made available to the county attorney, the trial judge, and the defendant.
- E. Nothing in this rule shall be deemed to limit the authority of the county attorney to withdraw the criminal prosecution in any given case.
- F. The Defendant must be represented by an attorney.

## II. APPROVAL FOR PARTICIPATION

- A. The Defendant must plead guilty to the charges to be eligible for this program. Once a plea of guilty is entered, sentencing shall be withheld pending completion of the diversion requirements.
- B. Upon consent of both the county attorney and the Defendant, the trial judge shall approve participation in the Diversion Program for any individual who meets the eligibility requirements established in Section I above unless the trial judge is of the opinion that diversion is inappropriate because:
  - 1) There is a substantial risk that the Defendant will abscond from the jurisdiction of the court prior to the fulfillment of the terms of the Diversion Contract.
  - 2) There is a substantial risk that the Defendant will commit another crime prior to the fulfillment of the terms of the Diversion Contract.
  - 3) The Defendant is in need of correctional treatment that can be provided most effectively by commitment to the county jail.
  - 4) Participation in the Diversion Program would unduly depreciate the seriousness of the alleged offense.

- B. Consent of the county attorney to the person's participation in the Diversion Program shall not be unreasonably withheld. If the county attorney refuses to consent to the person's participation in the Diversion program, the county attorney shall state on the record the reasons therefor.
- C. Prior to approval for participation in the Diversion Program, the pretrial services office shall present to the trial judge the comments and opinions, if any, of the arresting officer and/ the victim of the alleged crime regarding the nature of the offense, the appropriateness of diversion, and the suggested terms of the Diversion Contract. While not binding on the trial judge, such comments and opinions, if any, shall be considered by the trial judge in determining approval or re-referral for participation in the Diversion Program.
- D. Upon approval for participation in the Diversion Program the county attorney shall present to the trial judge special terms, if any, which he/she believes should be included in the Diversion Contract, or which the arresting officer or the victim have requested to be included in the Diversion Contract. Although such requests are not binding on the trial judge, they shall be considered by he/she when approving the Diversion Contract.
- E. Upon approval for participation in the Diversion Program the trial judge shall note on the court docket any special term(s) that he/she is requiring to be included in the Diversion Contract.

### III. THE DIVERSION CONTRACT

- A. Upon approval of participation in the Diversion Program, the Defendant shall meet with a pretrial officer to establish and agree to a formal contract which shall specify the conditions required; the referral services to be used; the length of the contract; and the need, if any, for the Defendant to make required restitution or perform community service. The contract shall be presented for final approval to the court, and upon its final approval, the terms of diversion shall commence. The Diversion Contract shall contain any special terms required by the court.
- B. The normal contract on each accused shall be for a period of not more than six (6) months, unless lengthened by the court.
- C. The Defendant must comply with all provisions of the Diversion Contract. Violation of contract provisions shall subject the Defendant to termination of diversion participation, and return to the Court for sentencing.
- D. At any time the Defendant may voluntarily choose to be terminated from the Diversion Program by submitting a written statement indicating the same. Where the termination is prior to the expiration of the contract period and without the

consent of the pretrial officer, the pretrial officer shall refer the case to the Court for sentencing.

- E. Upon successful completion of the Diversion Contract the underlying criminal conviction, shall be formally set aside and fully dismissed, and all official records of said charge shall bear the notation that said charge was dismissed with prejudice.

### III. ADMINISTRATIVE FEES

The fee for participation in the Diversion Program shall be in the amount set by the Director of the Administrative Office of the Courts. The court may assess the fee on a sliding scale based upon ability to pay or waive the fee entirely in the case of indigence.

**ULCr 60.01 15<sup>th</sup> Judicial District Courts (Carroll, Grant & Owen)**  
**Theft by Deception Diversion Program**

**I. ELIGIBILITY REQUIREMENTS**

- A. All persons charged with misdemeanor theft by deception involving a check shall be eligible for participation in the Theft by Deception Diversion Program, as an alternative to criminal prosecution unless the person was previously diverted to the Theft by Deception Diversion Program and failed to successfully complete the terms of the diversion.
- B. The Defendant must be represented by an attorney.
- C. Nothing in this rule shall be deemed to limit the authority of the county attorney to withdraw criminal prosecution in any given case.

**II. APPROVAL FOR PARTICIPATION**

- A. The Defendant must plead guilty to the charge of Theft By Deception to be eligible for this program. Once a plea of guilty is entered, sentencing shall be withheld pending completion of the diversion requirements.
- B. Upon consent of both the county attorney and the Defendant, the trial judge shall approve participation in the Theft by Deception Diversion Program for any individual who meets the eligibility requirements established in Section I above unless the trial judge is of the opinion that the Theft by Deception Diversion Program is inappropriate because:
  - 1) There is a substantial risk that the accused will abscond from the jurisdiction of the court prior to the fulfillment of the terms of the Theft by Deception Diversion Contract .
  - 2) There is a substantial risk that the accused will commit another crime prior to the fulfillment of the terms of the Theft by Deception Diversion Contract.
  - 3) The accused is in need of correctional treatment that can be provided most effectively by commitment to the county jail.

- 4) Participation in the Theft by Deception Diversion Program would unduly depreciate the seriousness of the alleged offense.
- C. Consent of the county attorney to the Defendant's participation in the Theft by Deception Diversion Program shall not be unreasonably withheld. If the county attorney refuses to consent to the accused's participation in the Check Diversion program, he/she shall state on the record the reasons therefor.
- D. Prior to approval for participation in the Theft by Deception Diversion Program, the pretrial services officer shall present to the trial judge the comments and opinions, if any, of the arresting officer and the victim of the alleged crime regarding the nature of the offense, the appropriateness of Diversion, and the suggested terms of the Theft by Deception Diversion Contract. While not binding on the trial judge, such comments and opinions, if any, shall be considered by the trial judge in determining approval or re-referral for participation in the Theft by Deception Diversion Program.
- E. Upon approval for participation in the Theft by Deception Diversion program the county attorney shall present to the court special terms, if any, which he/she believes should be included in Theft by Deception Diversion Contract. Although such requests are not binding on the court, they shall be considered by court when approving the Theft by Deception Diversion Contract.
- F. Upon approval for participation in the Theft By Deception Diversion Program the trial judge shall note on the court docket any special term(s) that he/she is requiring to be included in the Theft by Deception Diversion Contract.

### III. THE DIVERSION CONTRACT

- A. Upon approval of participation in the Theft by Deception Diversion Program, the Defendant shall meet with a pretrial officer to establish and agree to a formal contract which shall specify the conditions required; the referral services to be used; the length of the contract; and, the need, if any, for the Defendant to make required restitution or perform community service. The contract shall be presented for final approval to the court, and upon its final approval, the terms of diversion shall commence. The Theft by Deception Diversion Contract shall contain any special terms required by the court.
- B. The normal contract on each accused shall be for a period of not more than six (6) months, unless lengthened by the court.

- C. The Defendant must comply with all provisions of the Theft by Deception Diversion Contract. Violation of contract provisions shall subject the Defendant to termination of diversion participation, and return to the Court for sentencing.
- D. At any time the Defendant may voluntarily choose to be terminated from the Theft by Deception Diversion Program by submitting a written statement indicating same. Where the termination is prior to the expiration of the contract period and without the consent of the pretrial officer, the pretrial officer shall refer the case to the Court for sentencing.
- E. Upon successful completion of the Theft by Deception Diversion Contract the underlying criminal conviction, shall be formally set aside and fully dismissed, and all official records of said charge shall bear the notation that said charge was dismissed with prejudice.

### III. ADMINISTRATIVE FEES

The fee for participation in the Diversion Program shall be in the amount set by the Director of the Administrative Office of the Courts. The court may assess the fee on a sliding scale based upon ability to pay or waive the fee entirely in the case of indigence.